S.B. Civil Writ Petition No.5779/2007
Ratan Lal & Ors.
vs
Jeewan Mal & Anr.

Date of order : 12.12.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. OP Mehta, for the petitioners.
Mr. Bheem Arora, for the respondents.

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Heard learned counsel for the parties.

It appears that matter came up before the Division Bench in D.B.Civil Special Appeal (Writ) No.895/2006 and the following interim order was passed by the Division Bench on 11.12.2006:

> "Meanwhile, no alternation in the shops shall be made by any of the parties and the respondents shall deposit Rs.2,000/- P.M. by way of mense profit in the Court, the right to which shall be decided at time of hearing of the appeal. Further, the proceedings in the suits filed by the respective parties, out of which this appeal had arisen, shall remain stayed."

Ultimately, the D.B. Civil Special Appeal (Writ) No.895/2006 was decided by the detailed order on 16th March, 2007. This Court passed the following order and direction :

> "Accordingly, the appeal is allowed, judgment under appeal is set aside. The

> writ petition filed by Ratan Lal and others is dismissed and the order of the trial court allowing the amendment is sustained. The trial court is directed to decide the suit expeditiously and complete the trial. The question about the liability of the mesne profit shall be decided by the trial court and the amount including the amount of mesne profit deposited by the respondents during the pendency of the proceedings shall be dealt with as per the final conclusion reached by the Court in this regard."

When matter came up before the trial court after Division Bench decision, the learned trial judge straightway directed the petitioner to pay the mesne profit @ Rs.2,000/- per month only with the reason that since the Division Bench of the High Court granted mesne profit @ Rs.2,000/- per month by interim order dated 11.12.2006, therefore, the petitioner is liable to pay the amount of mesne profit @ Rs.2,000/- per month during the pendency of the suit. Therefore, on the face of it, it is clear that the trial court missed to read the following part of the direction of this Court given in D.B. Special appeal (Writ) No.895/2006:

> ".....The question about the liability of the mesne profit shall be decided by the trial court and the amount including the amount of mesne profit deposited by the respondents during the pendency of the

> proceedings shall be dealt with as per the final conclusion reached by the Court in this regard."

Therefore, the Division Bench of this Court clearly directed the trial court to decide the question about liability of mesne profit obviously of the petitioner in accordance with law and passed order and has not directed that the petitioner shall be liable to pay mesne profit @ Rs.2,000/- per month even after the decision of D.B. Civil Special Appeal (Writ) No.895/2006. By this order of the Division Bench, the trial court was supposed to decide the question of liability of the mesne profit of the petitioner in accordance with law.

In view of the above, the writ petition of the petitioner is allowed, the trial court may decide about the question about the liability of mesne profit of petitioner in accordance with law and may pass appropriate order after hearing both the parties.

(PRAKASH TATIA), J.

c.p.goyal/-